

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>MARLON TROY DUMARCE,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>DOUGLAS WEBER, WARDEN; and MARTY JACKLEY, ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA;</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">CIV. 16-04034-KES</p> <p style="text-align: center;">ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING CASE</p>
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Petitioner, Marlon Troy Dumarce, filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. Docket 1. The petition was referred to United States Magistrate Judge Veronica L. Duffy under 28 U.S.C. § 636(b)(1)(B) and this court's October 16, 2014, standing order. Defendants move to dismiss the petition. Docket 12. Magistrate Judge Duffy filed a report and recommendation recommending that DuMarce's petition be dismissed as untimely. Docket 16.

Objections to the report and recommendation were due by July 29, 2016. The time for objections has passed. DuMarce did not file objections to the report and recommendation. The court has considered the case de novo and adopts the report and recommendation in full.

Based upon the reasons stated in the report and recommendation and under Federal Rule of Appellate Procedure 22(b), the court finds that petitioner has not made a substantial showing of the denial of a constitutional right.

Thus, a certificate of appealability is not issued. *See* 28 U.S.C. § 2253(c)(2) ("A

certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right”).

It is ORDERED

1. The report and recommendation (Docket 16) is adopted in full.
2. Respondents’ motion to dismiss (Docket 12) is granted.
3. Petitioner’s pro se petition for habeas corpus (Docket 1) is dismissed with prejudice.
4. No certificate of appealability is issued.

Dated August 10, 2016.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE